

SANDRA MOSER
Acting Chief
WILLIAM E. JOHNSTON
DANNY NGUYEN
Trial Attorneys
Criminal Division, Fraud Section
1400 New York Avenue, NW
Washington, DC 20530
(202) 514-0687 (Johnston)
(202) 353-0183 (Nguyen)

DAYLE ELIESON
United States Attorney
RICHARD ANTHONY LOPEZ
Assistant United States Attorney
District of Nevada
501 Las Vegas Blvd. South, Suite 1100
Las Vegas, Nevada 89101
(702) 388-6336
tony.lopez@usdoj.gov

Attorneys for the United States

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

IT IS HEREBY STIPULATED AND AGREED between the parties, Sandra Moser, Acting Chief of the Criminal Division's Fraud Section, William E. Johnston and Danny Nguyen, Trial Attorneys, Dayle Elieson, United States Attorney, and Richard Anthony Lopez, Assistant United

1 States Attorney, counsel for the United States, and Defendant Edwin Fujinaga, by and through
2 Rene Valladares and Heidi Ojeda of the Federal Public Defender's Office, that this court issue an
3 Order pursuant to Federal Rule of Criminal Procedure 15(h) authorizing the taking of depositions
4 of three witnesses residing in Japan. In support of this joint request, the parties state as follows:

5 1. The indictment in this case, returned on July 8, 2015, charged the defendant, Edwin
6 Fujinaga, with eight counts of mail fraud, nine counts of wire fraud, and three counts of engaging
7 in monetary transactions in property derived from specified unlawful activity. The charges relate
8 to investments offered to Japanese residents by Fujinaga's Las Vegas-based company, MRI, in
9 medical accounts receivable (MARS), or consumer medical debt. As part of those charges, the
10 indictment names six victims, partially anonymized through use of their initials. See Dkt. 1 at 5-
11 7. Each named victim relates to specific counts within the indictment. Five of these victim-
12 witnesses are citizens or residents of Japan. The sixth, though a Japanese citizen, splits time
13 residing in Canada and the United States.

14 2. Since before the indictment, the government has worked with the American and
15 Japanese counsel for the investors in MRI, who had filed separate civil lawsuits against MRI, to
16 ensure that the six victim-witnesses named in the indictment would be able to testify in person at
17 trial. Prior to indictment, the government had been able to speak in person with five of the victims.
18 The government's motion for continuance on July 17, 2017 and accompanying request for a firm
19 trial date were motivated by the need to give a degree of scheduling certainty to witnesses who
20 would be traveling voluntarily from Japan to the U.S. to testify. Despite these best efforts, the
21 government has been informed by the investors' counsel that three of the named witnesses are
22 either unable or unwilling to travel from Japan to testify: H.H., E.U., and N.Y. There is no
23 provision in the Mutual Legal Assistance Treaty between the United States and Japan to compel a
24

1 Japanese citizen to travel to the U.S. to testify. According to the investors' counsel, all three are
2 willing and able to sit for depositions in Tokyo and/or Osaka.

3 3. Federal Rule of Criminal Procedure 15(h) permits, with the court's consent, for
4 parties to take and use depositions by agreement. Given the witnesses' unavailability and the
5 relevance of their anticipated testimony to the charges in the indictment, the parties agree that their
6 depositions should be taken for possible use at trial.

7 4. The following procedures will be followed:

8 a. The depositions will occur at the U.S. Embassy in Tokyo, Japan and/or the
9 U.S. Consulate in Osaka, Japan;

10 b. The depositions will be governed by the Federal Rules of Evidence and
11 Criminal Procedure to the extent the foreign authorities permit;

12 c. The witness will affirm under the penalty of criminal prosecution to answer
13 all questions truthfully and completely;

14 d. The government shall arrange for the services of Japanese-English
15 interpreters to interpret for the parties at the depositions, but those interpreters will not be
16 employees of the U.S. Department of Justice or FBI;

17 e. A verbatim, stenographic recording will be made of the English portion of
18 the proceedings and the testifying witness will be videotaped, if the foreign authorities will so
19 permit;

20 f. The witness will be questioned first by the government attorneys, then
21 cross-examined by the defendant's attorneys, and then questioned by the government attorneys;
22 and

23 g. A live videoconference connection will be arranged between the deposition
24 site(s) in Japan and an office in Las Vegas so that counsel for the defendant, the defendant himself,

1 and attorneys for the government can participate in the deposition without having to travel to Japan
2 in person. One or more attorneys and/or investigative agents for the government may attend the
3 deposition in person in Japan.

4 5. By stipulating to the taking of the depositions, the parties do not yet stipulate as to
5 the admissibility or use of any part of the anticipated testimony.

6
7 SANDRA MOSER
8 Acting Chief
Criminal Division, Fraud Section
United States Department of Justice

RENE L. VALLADARES
Federal Public Defender
District of Nevada

9
10 /s/
WILLIAM E. JOHNSTON
DANNY NGUYEN
11 Trial Attorneys
Criminal Division, Fraud Section

/s/
12 HEIDI OJEDA
Assistant Federal Public Defender
District of Nevada

13 DAYLE ELIESON
United States Attorney
14 District of Nevada

15 /s/
16 RICHARD ANTHONY LOPEZ
Assistant United States Attorney
17 District of Nevada

18 Dated: August 8, 2018

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)
Plaintiff,) 2:15-cr-00198-GMN-NJK-1
v.) **ORDER AUTHORIZING FOREIGN**
EDWIN FUJINAGA,) **DEPOSITIONS PURSUANT TO RULE**
Defendant.) **15(h)**

This matter comes before the Court on the parties' Stipulation for an Order Authorizing Foreign Depositions Pursuant to Rule 15(h), the premises therein considered, and good cause showing, the Court GRANTS the parties' stipulation, Docket No. 87, and ORDERS that:

1. Three witnesses named in the indictment, designated by the initials H.H., E.U., and N.Y., may be deposed at a time and date to be arranged by the parties so their testimony may be preserved for possible use at trial.

2. The following procedures will be followed:

- a. The depositions will occur at the U.S. Embassy in Tokyo, Japan and/or the U.S. Consulate in Osaka, Japan;

b. The depositions will be governed by the Federal Rules of Evidence and Criminal Procedure to the extent the foreign authorities permit:

c. The witness will affirm under the penalty of criminal prosecution to answer all questions truthfully and completely:

d. The government shall arrange for the services of Japanese-English interpreters to interpret for the parties at the depositions, but those interpreters will not be employees of the U.S. Department of Justice or FBI;

e. A verbatim, stenographic recording will be made of the English portion of the proceedings and the testifying witness will be videotaped, if the foreign authorities will so permit;

f. The witness will be questioned first by the government attorneys, then cross-examined by the defendant's attorneys, and then questioned by the government attorneys; and

g. A live videoconference connection will be arranged between the deposition site(s) in Japan and an office in Las Vegas so that counsel for the defendant, the defendant himself, and attorneys for the government can participate in the deposition without having to travel to Japan in person. One or more attorneys and/or investigative agents for the government may attend the deposition in person in Japan.

3. In authorizing the depositions, the Court expresses no opinion as to the admissibility or use of any part of the anticipated deposition testimony.

IT IS SO ORDERED.

NANCY J. KOPPE
UNITED STATES MAGISTRATE JUDGE

Dated: August 9, 2018